IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 19802 of 2007(G)

PETITIONER:

GOVERNMENT ENGINEERING COLLEGE-
CO-OPERATIVE SOCIETY LTD., NO.R.51,
GOVT.ENGINEERING COLLEGE, THRISSUR,
REPRESENTED BY THE SECRETARY.

BY ADV. SRI.N.P.SAMUEL
SMT.M.C.SWAPNA

RESPONDENTS:

1. K.A.SURESH, S/O.APPUKUTTAN,
KANDANGATH HOUSE, P.O.ANAPPARA, THRISSUR DISTRICT.

2. DEPUTY LABOUR COMMISSIONER,
(AUTHORITY UNDER KERALA PAYMENT OF SUBSISTANCE
ALLOWANCE ACT), THRISSUR.

G.P. SHRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.19802 of 2007

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Dated this the 28th day of June, 2007

J U D G M E N T

The petitioner, a co-operative society, earlier approached this court challenging the orders of the authority under the Kerala Payment of Subsistence Allowance Act, directing payment of subsistence allowance to the 1st respondent for an earlier period which resulted in Ext.P1 judgment. In that judgment, this court without considering the liability of the petitioner to pay subsistence allowance to the 1st respondent on merits closed it saying that since the amount is only Rs.13,243/- this court is not going into the merits and directed the petitioner to pay the amount without interpreting the judgment as conferring any right on the 1st respondent to claim any status under the petitioner. Thereafter, again the authority under the Payment of Subsistence Act passed Exts.P2 and

P3 orders directing payment of subsistence allowance for subsequent periods. The petitioner is challenging those orders in this writ petition on the ground that the 1st respondent is not a member of the service of the petitioner society and therefore, he is not entitled to any subsistence allowance at all. The argument is that The Kerala Co-operative Societies Rules prescribe that disciplinary proceedings have to be taken only against the regular member of the service and since the 1st respondent was only temporarily engaged, he is not entitled to be considered as a regular member and therefore, he is not entitled to any subsistence allowance. The petitioner also relies on the award of the Industrial Tribunal in I.D.No.83/2003, wherein also it was held that the 1st respondent's services were not regularised at the time of termination of the 1st respondent's service. For all these reasons the petitioner would contend that since the 1st respondent was not a regular employee of the society, he is not entitled to subsistence allowance.

2. All these contentions could have been appreciated if the petitioner's society had simply terminated the service of the 1st respondent on the ground that he is only a temporary employee. But that is not the case here. Admittedly, the 1st respondent was an employee employed by the Society regular or otherwise. He was in fact proceeded against for serious misconduct. He was kept out of service. A domestic enquiry was conducted, in which he was found guilty and his services were terminated. That being so, the petitioner cannot take a contention now that since the 1st respondent is not a regular worker of the society, he is not entitled to subsistence allowance especially since no contention is raised on the ground that the 1st respondent is not an 'employee' as defined under the Kerala Payment of Substance Allowance Act. Once the facts that the 1st respondent was engaged as an employee and he has been suspended from service pending disciplinary action are admitted by the petitioner, the worker is entitled to payment of subsistence allowance under the Payment of

Subsistence Allowance Act. In the above circumstances, I do not find any merit in the challenge against Exts.P2 and P3. Accordingly, the writ petition is dismissed.

sdk+ S.SIRI JAGAN, JUDGE